

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-198438**DATE:** March 2, 1983**MATTER OF:** Raymond Eluhow - Reimbursement of Travel Expenses**DIGEST:**

Burden is on the claimant to establish the liability of the United States and the claimant's right to payment. Thus, a Department of Housing and Urban Development (HUD) employee, appealing HUD's denial of reimbursement for certain travel expenses claimed to have been incurred while on temporary duty, may not be reimbursed for those expenses for lodging which he cannot convincingly demonstrate were both actually incurred in the amount claimed and essential, both as to amount and purpose, to transacting official business.

In April 1980, Mr. S. Saunders, an authorized certifying officer at the Department of Housing and Urban Development (HUD) in Washington, D.C., requested an advance decision as to whether Mr. Raymond Eluhow, a HUD employee, was entitled to reimbursement for certain travel expenses incurred while on temporary duty. In June 1980, this Office responded to Mr. Saunders' request by noting that Mr. Eluhow was raising the same claim in an age discrimination suit. Since the claim was being litigated in a court of competent jurisdiction, we found that it would be inappropriate for this Office to render a decision on the same matter. After the court dismissed the age discrimination suit, Mr. Eluhow requested that we reopen his claim for reimbursement of travel expenses. For the reasons stated below, we conclude that Mr. Eluhow is entitled to reimbursement for lodging based on a monthly rental of \$300, and to reimbursement for otherwise appropriate subsistence expenses.

Mr. Eluhow, whose permanent duty station was Washington, D.C., was sent by HUD to Las Vegas, Nevada, to assist the United States Attorney in the preparation of a case for trial. Mr. Eluhow was authorized to travel from October 24, 1978, to December 5, 1978. After arriving in Las Vegas on October 24, 1978, Mr. Eluhow checked into the Holiday Inn. Hotel records indicate that he remained registered at the hotel from October 24 to the morning of November 9. On November 8, Mr. Eluhow signed a lease for the rental of a

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two-bedroom apartment at the KLAS Apartments in Las Vegas for the period of November 8 to December 8, 1978. Mr. Eluhow's family joined him in Las Vegas sometime in mid-November. Mr. Eluhow took annual leave from December 6 to December 11. On December 12, he vacated the apartment and returned to Washington, D.C.

Although HUD paid the partial travel voucher Mr. Eluhow submitted for the period from October 24 to November 15, it subsequently denied reimbursement for lodging and subsistence expenses claimed on Mr. Eluhow's supplemental, final travel voucher for the period October 24 to December 5. In addition, HUD instituted a recoupment action to recover the sums already paid for lodging and subsistence expenses claimed on the initial voucher for the period of November 9 to November 15. HUD justified these actions by alleging that there was sufficient information in the record to show that the amount claimed for lodging at the KLAS apartments was in excess of that which Mr. Eluhow should have claimed.

The record reflects considerable uncertainty as to the amount of rent that Mr. Eluhow paid for the apartment. Mr. Eluhow paid the rental agent \$600 by check. Although the check was payable to the order of the rental agent rather than to the order of the management agency representing the owners or to the order of the owners themselves, Mr. Eluhow specified on the face of the check that the \$600 was payment for 1 month's rental of the apartment. He received a receipt from the rental agent in the amount of \$600 for the payment of rent from November 8 to December 8. Mr. Eluhow accordingly claimed reimbursement for lodging at the apartment at a rate of \$20 per day.

The rental agent later told investigators for HUD that only \$300 of the \$600 was payment for the rent. She claimed that the remainder represented payment for her provision of cleaning services, the purchase of housewares, and rent for occupation of the apartment before (while Mr. Eluhow was claiming reimbursement for staying at the Holiday Inn) and after (while on leave) the term of the lease. The rental agent had written a \$300 rent receipt for the same period as that covered in the above mentioned receipt for \$600. Further, the first page of the lease, signed on the last page by Mr. Eluhow, contains a declaration that the rent was only \$300. The records of the management agency contain a similar figure.

In reply, Mr. Eluhow casts doubt on the rental agent's veracity, pointing to her admission that she had been accused by the management agency of retaining rent money and to her preparation of receipts in differing amounts. He implies that she substituted a different first page in the lease after he had signed it.

Mr. Eluhow also refers to evidence in the record showing that two-bedroom units at the KLAS Apartments often rented for more than \$600. We find this evidence somewhat unconvincing, since the examples he cites may reflect the utilization of the units as motel rooms before and after Mr. Eluhow's stay. Nor do they diminish the force of HUD figures, published in March 1978, showing that the median rental for a two-bedroom apartment in Las Vegas was \$264 per month in a building without an elevator and \$291 in a building with an elevator.

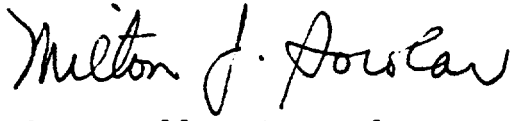
Even if Mr. Eluhow paid the \$600 rent for a two-bedroom apartment, he could not be reimbursed the entire sum. Only travel expenses which are "essential to the transacting of official business" may be reimbursed. Federal Travel Regulations, FPMR 101-7 (May 1973), para. 1-1.3b. Mr. Eluhow has failed to show that a two-bedroom apartment was essential to the transaction of official business if one-bedroom units were also available.

Mr. Eluhow has not demonstrated that one-bedroom units were unavailable. He claims that, when he requested a one-bedroom apartment at the KLAS Apartments, he was informed that all of them were in the process of renovation and he was instead offered a two-bedroom unit for the same rent as that charged for a one-bedroom apartment. He cites evidence suggesting that some of the one-bedroom units may have been in the process of being painted at that time.

However, taken as a whole, the evidence in the record casts doubt on Mr. Eluhow's claim that he initially requested a one-bedroom unit, and therefore calls into question Mr. Eluhow's claim that one-bedroom apartments were unavailable at the KLAS Apartments. The rental agent denies having conversed with Mr. Eluhow about one-bedroom apartments, and states that Mr. Eluhow instead requested a two-bedroom unit in order to accommodate his family. The purchase of airline tickets to Las Vegas for Mr. Eluhow's family on November 7, the day before he signed the lease and ostensibly learned that only two-bedroom apartments were available, corroborates the rental agent's account. Nor has he shown that

suitable one-bedroom apartments were unavailable elsewhere. Since Mr. Eluhow has also failed to show that the rent for the two-bedroom apartment was the same as that for the one-bedroom apartment, we must conclude that, if Mr. Eluhow paid \$600 per month in rent for the two-bedroom unit, some part of the \$600 represents an expenditure incurred for the purposes of providing for an extra bedroom for Mr. Eluhow's family, and not necessitated by the requirements of transacting official business.

The burden is on the claimant to establish the liability of the United States and the claimant's right to payment. 4 C.F.R. § 31.7 (1982). Mr. Eluhow has not convincingly demonstrated that he paid more than \$300 per month rent. Nor has he shown that, even if he paid \$600 per month rent for a two-bedroom apartment, either a two-bedroom apartment was essential to transacting official business or that one-bedroom units were unavailable. Therefore, we conclude that Mr. Eluhow may not be reimbursed for lodging on the basis of a \$600 per month rent. Rather, we hold that he is entitled to be reimbursed for lodging on the basis of the \$300 per month rent which, at a minimum, he paid. In addition, he may be reimbursed for otherwise appropriate subsistence expenses.

for 
Comptroller General
of the United States